REMARKS

Claims 58 to 64, 68 to 77 and 81 to 96 were pending on the July 21, 2009, mailing date of the non-final Office Action. Claims 68, 81 and 94 have been cancelled, without prejudice or disclaimer of subject matter, and their substance has been incorporated into independent claims 58, 71, and 84, respectively. Reconsideration and further examination are requested.

Claim Rejections – 35 U.S.C. § 102

In the Office Action, claims 58 to 64, 68 to 77 and 81 to 96 were rejected under 35 U.S.C. § 102(b) over U.S. Pat. No. 7,174,308 ("Bergman"). Withdrawal of the rejection is requested.

Bergman, which provides a method and system for ordering and selling products at a venue (i.e., "a stadium 12 or similar location"), does not describe the features of "determining, by the mobile device, that the particular storage location is expected to be empty," and "responsive to determining that the particular storage location is expected to be empty, prompting, by the mobile device, the warehouse worker to confirm that the particular storage location is observed to actually be empty." These features are similar to those recited by cancelled claims 68, 81, and 94, which were rejected over FIG. 1, elements 34 and 36, and column 5, ll. 25 to 61 of Bergman.

The cited passages of Bergman provide that an order station "may include an inventory record for each vendor to track the availability of items for sale as well as the number of items sold during an event at the venue." *See* Bergman, col. 5, ll. 29 to 42. When processing an order, the order station may also check the inventory record "to ensure that order information is given to a vendor with enough available items to fill the order." *See* Bergman, col. 5, ll. 35 to 38. Regardless of whether the inventory record is checked, however, the order station sends a message related to the order to a vendor 32, providing an opportunity for the vendor to accept or reject the filling the order. *See* Bergman, col. 5, ll. 39 to 55. Nothing in this process flow, however, contemplates the order station sending a message to a vendor to *confirm* that their dispenser is *observed* to actually be *empty*, responsive to determining (by the order station) that the dispenser is *expected* to be *empty*. In fact, "regardless" of the inventory of a particular vendor, the order station still sends a message to the vendor requesting fulfillment of the order.

See Bergman, col. 5, ll. 39 to 41. Indeed, although a rejection of an order by the vendor is described as signify many things (e.g., "he or she is presently off duty"), nowhere does Bergman describe that the rejection serves as confirmation that, as expected by the order station, the vendor's dispenser has been observed to actually be empty. Accordingly, Bergman does not disclose, teach, or suggest the "determining" and "prompting" features of the independent claims.

Bergman also does not describe a "single" mobile device which performs the actions recited by the claims. Instead, the Office Action rejects the "providing" feature, portions of the first "receiving" feature, and the "updating" feature by citing the functionality of the order station 30 (*generally*, col. 5, ll. 7 to 32), while rejecting the second and third "receiving" features by citing the functionality of the venue attendee device (*generally*, col. 4, ln. 34 to col. 5, ll. 8) and while inconsistently rejecting others portions of the first "receiving" feature, and the "determining" and "prompting" by citing the functionality of the vendor communication module 88 (*generally*, col. 5, ln. 33 to col. 5, ll. 4.). Since the system of Bergman requires three different devices to implement this unitary functionality, the Applicant submits that it fails to recite the "single" mobile device feature, as further clarified by the claim amendments.

Bergman also does not describe "providing a multi-modal user interface on a single mobile device, the multi-modal interface for assisting a warehouse worker in performing inventory management tasks in a warehouse that stores different items for sale in multiple storage locations disposed throughout the warehouse." In previously rejecting this claim feature, the Office Action relied on an interpretation of "warehouse environment" to mean any venue that holds an inventory and that employs workers who often use their hands to perform tasks. *See* Office Action, pg. 2. In doing so, the Office Action has effectively stated that a stadium and a warehouse are the same thing.

While a worker in a warehouse environment may use his hands to perform tasks, the opposite proposition -- that a worker who is using their hands to perform tasks is necessarily in a warehouse environment -- is certainly not true. Yet this is the conclusion made by the Office Action, which supports the rejection of the independent claims by arguing that a stadium worker performs inventory management tasks in a warehouse, because they hold an inventory, and because they use their hands to perform tasks.

It is a well settled principle that the scope of claims in patent applications is not determined solely on the basis of the claim language, but also upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). *Phillips v. AWH Corp.*, 76 U.S.P.Q. 1321, 1329 (Fed. Cir. 2005) (en banc). In choosing to construe the term "warehouse environment" as merely any venue in which "a worker often uses his hands to perform tasks," the Office Action has violated the holding of *Phillips* by ignoring the apparent meaning of the term "warehouse" as would be interpreted by one of ordinary skill in the art, and by also ignoring the rich definition of the term provided within the specification itself. For instance, ¶ **[0343]** of the published application describes that a warehouse is a place "for storing a large number of products for sale in an accessible, cost-efficient manner," for example "a site for fulfilling direct mail orders for shipping the stored products directly to customers," "a site for providing inventory to a retail outlet, such as, for example, a grocery store," or "an actual shopping location." *See* U.S. Pat. App. Pub. No. 2004/0181467, ¶ **[0343]**. The overbroad interpretation of the term "warehouse environment" selected by the Office Action does not align with the use of the term, as provided by the remainder of the specification.

Based on these examples, the claims have been amended to recite the feature of "the multi-modal interface for assisting a warehouse worker in performing inventory management tasks in a warehouse that stores different items for sale in multiple storage locations disposed throughout the warehouse." Accordingly, the Applicant submits that, as one of ordinary skill in the art would interpret a "warehouse" in light of ¶ **[0343]** of the published application, the stadium of Bergman is not a warehouse, notwithstanding the mere fact that, like workers in a warehouse, workers at a stadium might possibly use their hands to perform tasks

Bergman is similarly deficient with regard to the feature of "receiving … a response … … a best route from a present location of the warehouse worker to the particular storage location." The Office Action has interpreted the previously claimed term "best *route* from a present location of the user to the bin" to mean a "best *zone* from a present location of the user to the bin." *See* Office Action, pg. 5. Initially, the Applicant submits that the misinterpreted phrase "best *zone* from a present location of the user to the bin" does not make grammatical sense, since a "zone" does not naturally connect two locations, as claimed. Furthermore, since the

specification never refers to a "route" as a "zone," it is inconceivable that one of ordinary skill in the art would interpret a "route" in that manner. *See* U.S. Pat. App. Pub. No. 2004/0181467, ¶ **[0004]**, **[0345]**, and **[0441]**. The Applicant therefore submits that the rejection of this feature be withdrawn unless the Examiner can provide evidence within the specification which would indicate why one of ordinary skill in the art to interpret a *route* from one location to another as a *zone* from one location to another.

Finally, Bergman is also deficient with regard to the features of "receiving … a response … in two or more formats which are consistent with both the first modality and the second modality," "providing … the response … in the two or more formats which are consistent with both the first modality and the second modality," "receiving… a second user input using either the first modality or the second modality as chosen by the warehouse worker," "updating … inventory data … using the two or more formats which are consistent with both the first modality and the second modality," and "prompting … using both the first modality and the second modality." While the cited portions of Bergman may, at best, disclose that the various communication devices are *capable of* implementing multiple modalities at different times, nowhere does Bergman disclose that multiple modalities are actually used to support specific transmission and reception actions. *See* Bergman, col. 7, ll. 21 to 42. Indeed, Bergman's explicit description of voice ordering as "an alternative" to a visual modality supports the notion that communication between the vendor communication device, the order station, and the vendor attendee device occur in a single modality only, and not using both first and second modalities. Furthermore, even assuming *arguendo* that Bergman did support the use of two or more formats or modalities, nowhere does Bergman describe that the selected formats are those which are "chosen by the warehouse worker," as claimed. Under this rationale, the rejection of the newly clarified dual modality features also fails.

The other rejected claims in the application are each dependent on independent claims 58, 71, and 84. Therefore, the dependent claims are allowable over the applied reference for at least the above reasons. Because each claim is deemed to define additional aspects of the disclosure, however, the individual consideration of each claim on its own merits is respectfully requested.

CONCLUSION

All of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment.

The undersigned attorney welcomes the opportunity to further discuss by telephone any position or issue not fully addressed by the above remarks and amendments.

No charges are due. However, if any fees are due, they are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 13909-0137001.

Respectfully submitted,

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